

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-218912.2 **DATE:** June 10, 1985

MATTER OF: Automated Data Management, Inc.--
Reconsideration

DIGEST:

GAO does not review an agency decision not to award a contract under the section 8(a) program unless there is a showing of possible fraud or bad faith on the part of government officials or that specific regulations may have been violated.

Automated Data Management, Inc. (ADM), requests reconsideration of our notice of May 17, 1985, which dismissed ADM's protest against the refusal by the Department of Agriculture to procure computer and software needs under the Small Business Administration (SBA) 8(a) program.

We dismissed the protest because decisions whether to procure under the 8(a) program are not reviewed by our Office absent indications that specific regulations have been violated or a showing of possible fraud or bad faith on the part of government officials.

We affirm the dismissal.

Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982), authorizes the SBA to enter into contracts with any government agency with procuring authority and to then subcontract performance of the contracts to socially and economically disadvantaged small businesses. The statute also authorizes the procuring agency's contracting officer to award contracts to SBA "in his discretion." Welbilt Electronic Die Corporation, B-210289, Feb. 1, 1983, 83-1 C.P.D. ¶ 114. In light of this broad discretion given contracting officers, we do not review an agency decision not to contract under the 8(a) program unless there is a showing of possible fraud or bad faith on the part of government officials or that specific regulations may have been violated.

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ADM does not allege fraud or bad faith. ADM contends that the failure to procure under the 8(a) program violates Federal Acquisition Regulation (FAR) sections 19.201(a), 19.202-1, 19.202-3 and 14.407-6, 48 C.F.R. §§ 19.201(a), 19.202-1, 19.202-3, 14.407-6 (1984).

The cited regulations provide for placing a fair proportion of acquisitions with small business concerns and small disadvantaged concerns (§ 19.201), encourage small business participation in government acquisitions (§ 19.202-1), and establish the priority to be accorded small business concerns where tie low bids are received (§§ 19.202-3, 14.407-6). However, nothing in those regulations requires any particular procurement to be effected under section 8(a). Thus, the agency's actions here do not violate the cited regulations.

for Raymond E. Van Cleve
Harry R. Van Cleve
General Counsel

General Electric